

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Request for  
Fair Hearing of:

CODY G.,

Claimant,

v.

ALTA CALIFORNIA REGIONAL  
CENTER,

Service Agency.

OAH No. 2011090362

**DECISION**

Administrative Law Judge Ann Elizabeth Sarli, Office of Administrative Hearings, State of California, heard this matter in Placerville, California on October 18, 2011.

Rob Franco, Hearing Representative, represented Alta California Regional Center (ACRA or Regional Center).

Cody G. (claimant) was present and was represented by his mother, Patricia G.

The record was closed and the matter was submitted on October 18, 2011.

**ISSUE**

Should claimant receive 90 hours a month of personal assistant services?

## FACTUAL FINDINGS

### *Background*

1. The Regional Center issued claimant a Notice of Proposed Action (NOPA) on August 30, 2011, denying claimant's request to fund personal assistance services. The NOPA stated that the request was denied because "An assessment of [claimant's] daily schedule indicates that no need exists for personal assistance services... Specifically, ACRC has determined that with [claimant's] current IHSS hours, respite hours, day program time, sleep hours and family\alone time, [claimant] already receives approximately 24 hours a day of care. Thus [claimant's] care and supervision needs are already met."

2. Claimant's parent timely filed a Request for a State Level Fair Hearing with the Regional Center. The matter was scheduled for a State Level Fair Hearing before an Administrative Law Judge of the Office of Administrative Hearings. All prehearing jurisdictional requirements have been met and jurisdiction exists for this proceeding.

3. Claimant is 26 and lives with his parents and six-year-old brother. He has been a ACRC client since birth, with qualifying diagnoses of severe mental retardation, epilepsy and cerebral palsy. Claimant also has Angelman Syndrome and Lennox-Gastaut Syndrome. As a result of these conditions, claimant experiences a severe form of epilepsy characterized by frequent seizures, severe mental retardation and behavioral disturbances. His seizures are uncontrolled and are triggered by myriad factors. He requires assistance in standing, walking, toileting, showering and dressing. He is unable to communicate verbally. He also suffers from insomnia.

4. Claimant attends a day program through M.O.R.E, on Monday, Wednesday and Friday from 9 a.m. to 3 p.m. (approximately 184 hours a month). He attends a day program at In Alliance on Tuesday and Thursday between 12 and 4 p.m. (approximately 32 hours a month). Although this combination of day programs provides claimant with a little over 216 hours per month out-of-home activity, there are often periods of time when claimant cannot attend the day programs because of increased seizure activity, headaches or behavioral issues. Additionally, he often sleeps late in the morning due to insomnia and misses part of the day program. On these days, he is unable to avail himself of the transportation provided for the programs, and his parent drives him to his day program.

5. Claimant is receiving respite services of 144 hours per quarter, funded by the Regional Center.

6. Claimant receives In Home Support Services (IHSS) funded by the Department of Social Services. Claimant's mother is vendored as the IHSS provider. Claimant receives 272 hours per month of IHSS services, the majority of which are designated for non-medical personal services and protective supervision.

7. Claimant's most recent Individual Program Plan (IPP), dated March 2, 2011, reflects the fact that he requires constant supervision due to his complex medical needs and his decreasing stability. The IPP describes the services listed in Findings 4 through 6, and does not include personal assistant services as an identified need or funded service.

8. Claimant's parent has requested 90 hours of personal assistance services because of the extreme circumstances that her family finds itself in. Claimant requires 24-hour care, claimant's father works two jobs in manual labor and has health problems, and claimant's mother cares for him and his six-year-old brother and suffers from fibromyalgia and chronic fatigue syndrome.

### *Estoppel*

9. When claimant requested personal assistance services, the ACRC planning team began a needs assessment. Claimant's mother began the process of identifying proposed personal assistants and submitting their applications. The process was terminated when the planning team determined that claimant's supervision needs were being met by the services and supports he had in place. Claimant's mother essentially maintains that ACRC is estopped from denying personal assistance service because she was led to believe the service would be provided and because she had received applications from the persons who would render this service. She is mistaken. Personal assistance services were not authorized by ACRC, included in the IPP or in an amendment to the IPP, or vendored. The Regional Center is statutorily required to conduct a needs assessment and by doing so does not commit to providing a service. Nor does the fact that the process of hiring personal assistants has begun constitute a waiver of statutory duties to determine whether there is a need for service.

### *Claimant's Services and Supports*

10. Claimant attends a day program approximately 216 hours a month. He receives 48 hours a month in respite and 272 hours per month of IHSS services. This is a total of 536 hours a month during which someone is being paid to attend to claimant's needs. There are approximately 732 hours in a month. Accordingly, there are 6.42 hours per day remaining in which someone is not being paid to attend to claimant's needs. The Regional Center maintains that these are hours claimant spends sleeping, in alone time and with family. The Regional Center maintains that by providing an additional 90 hours per month of personal assistance services, claimant would have more than 24 hours a day of services. [In fact, an additional 90 hours per month of personal assistance services leaves 2.95 hours per day in which no one is being paid to attend to his needs.]

11. Claimant's mother maintains that the hours claimant is assumed to be sleeping cannot be taken into consideration as hours in which he does not require supervision. This is because he suffers seizures at night and severe insomnia. She has to check on him repeatedly during the night and as a result she is sleep-deprived. Claimant's mother also maintains that when he has insomnia he does not make it to his day program the next day and she ends up spending 16 hours a day with him. Additionally, he can come home early during the day.

Claimant's mother also maintains that she does not have any family supports, so the Regional Center should not deduct family time from the number of hours in which claimant requires supervision. Finally, claimant's mother maintains that the 272 IHSS hours should not be deducted from the number of hours in which claimant is receiving services and supervision. She maintains that providing IHSS services to claimant is her "job" and if she had other employment outside the home, those outside work hours would not be deducted from the hours in which claimant required supervision. She also points out that she cannot get a job outside the home because she needs to be available to care for claimant at home when he does not make it to his day program or is sent home from the day program.

12. The Regional Center maintains that it is not able to provide personal assistance services to claimant for several reasons. First, with the passage of the Trailer Bill, regional centers are compelled to evaluate the "natural supports" and "generic resources" available to a consumer. Secondly, the Regional Center maintains that services and supports are available to claimant to provide his personal assistance needs. The Regional Center determined that claimant has adequate services and supports to meet his personal needs without personal assistance services hours. Additionally, natural supports were available to claimant, including involvement of both of his parents. It should also be noted that claimant has two older sisters, one of whom provides respite services, and claimant is a recipient of social security disability benefits.

13. Claimant relies on a March 18, 2002, Decision in case number N 2002010236 (*C.C. vs. North Bay Regional Center*) to support her position that IHSS hours should not be considered in calculating the number of hours claimant is receiving care and supervision. The North Bay decision has no precedential authority in this matter. Moreover, the North Bay decision relates to a regional center's refusal to provide *any respite services* to a parent who was vendored for IHSS services, on the theory that the "protective supervision" hours provided under the IHSS contract could have been used for respite. Here, claimant receives 48 hours a month in respite. (The North Bay decision directed that the regional center provide 42 hours of respite each quarter.) Additionally, the North Bay decision addresses the issue of how much time a consumer's parent should be allocated for respite services. Here, claimant's IHSS hours are being considered for the purpose of calculating the total number of hours claimant is receiving services that meet his needs for personal assistance. Claimant is receiving 272 hours per month of IHSS services for personal assistance, regardless of who is rendering the services. The fact that claimant's mother is providing the service has no bearing on whether his needs are being met 272 hours per month.<sup>1</sup>

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<sup>1</sup> Claimant's mother focused her arguments on the fact that being claimant's IHSS worker was her "job" and that the situation she finds herself in would be the same if she had other employment. As noted in the Findings, this argument pertains more to provision of respite hours than it does to the provision of personal assistance hours. Nevertheless, claimant's mother has the option of hiring another person to perform some or all of the IHSS services, and therefore the burden on her of caring for him would be significantly reduced. She chooses to render IHSS services for financial or other reasons. If claimant's mother was not rendering the IHSS services, the burden of caring for claimant 68 hours a week under the

14. Claimant's mother is naturally overwhelmed with claimant's care, the care and home schooling of her six-year-old and her own health problems. But, the bulk of her duties are self imposed, due to her choice to provide IHSS services to claimant. She has received an exemption from the statutory limitations on respite hours, because of her exceptional circumstances. Her request for personal assistant services is an effort to obtain further relief from her duties of caring for claimant, without seeking further respite hours. But, the goal of personal assistant services is to provide personal care and supervision to a consumer. The evidence is persuasive that claimant's current IHSS hours, respite hours, day program time, sleep hours and family\alone time, provide almost 24 hours a day of care. Thus his care and supervision needs are met. By providing personal assistance services in addition to the services and supports already in place, including a day program, extended respite and IHSS services, the Regional Center would disregard the natural and generic supports available to claimant, including family time, claimant's sleep time and his Social Security income, a generic resource that can be applied to his care and supervision. The Regional Center's mandate is to assess needs and provide services which prevent duplication and take into account all generic resources available, such as natural supports, including, but not limited to, family relationships.

## LEGAL CONCLUSIONS

1. Welfare and Institutions Code<sup>2</sup> section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

2. Section 4646.4, subdivision (a), provides in pertinent part:

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IHSS contract would be shifted in whole or in part to another individual. This would be the case whether she took outside employment or not. And claimant's mother's ability to provide the generic resource of "family natural support" would be enhanced were she not caring for him 68 hours a week under the IHSS contract.

<sup>2</sup> All statutory references are to the California Welfare and Institutions Code unless otherwise noted.

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

3. Section 4512, subdivision (e) provides in pertinent part:

"Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships....

4. Section 4648, subdivision (a), provides in pertinent part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that

meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

[¶...¶]

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

5. Section 4659, subdivision (a), provides in pertinent part:

Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

6. The ACRC Service Policy Manual provides general standards for the purchase of service and support. In pertinent part, the manual provides that services or supports shall not duplicate services or supports already being provided through natural supports, generic services or purchases by the regional center.

7. As set forth in the Findings, claimant's care and supervision needs are met through a combination of regional center funded services, generic services and natural supports. Accordingly, no need exists for personal assistance services.

## ORDER

The appeal of Cody G., from the Alta California Regional Center's denial of personal assistant services is DENIED.

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**

DATED: November 7, 2011

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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings